



**DEPARTMENT OF THE NAVY**  
**OFFICE OF THE SUPERINTENDENT**  
**UNITED STATES NAVAL ACADEMY**  
**121 BLAKE ROAD**  
**ANNAPOLIS, MARYLAND 21402-5000**

**Memorandum of Understanding (MoU)**  
**between**  
**The United States Naval Academy**  
**and**  
**The United States Naval Academy Foundation, Inc.**

This agreement is entered into as of this 25<sup>th</sup> day of June, 2009, by and between the U.S. Naval Academy (hereinafter referred to as "the Academy") and the U.S. Naval Academy Foundation, Inc. (hereinafter referred to as "the Foundation"), together referred to "the Parties."

In consideration of the mutual commitment of the Parties to the advancement of excellence in the accomplishment of the mission of the Naval Academy, the parties agree as follows:

**1. THE FOUNDATION'S RELATIONSHIP TO THE NAVAL ACADEMY**

- a. The Foundation was organized and incorporated on 31 December 1999. The mission of the Foundation is to support, promote, and advance the mission of the Naval Academy by working in conjunction with Academy leadership to identify strategic institutional priorities, and by raising, managing, and disbursing private gift funds that provide a margin of excellence in support of the nation's premier leadership institution.
- b. The Foundation is a separately incorporated 501 (c) (3) organization and is responsible for identifying and nurturing relationships with potential donors and friends of the Academy; soliciting gifts of cash, securities, real and intellectual property, and other private resources for the support of the Academy; and acknowledging and stewarding such gifts in accordance with its fiduciary responsibility and donor intent.

**2. THE NAVAL ACADEMY'S RELATIONSHIP TO THE FOUNDATION**

- a. The Academy is an Echelon Two command within the Department of the Navy whose mission is "To develop midshipmen morally, mentally and physically and to imbue them with the highest ideals of duty, honor and loyalty in order to graduate leaders who are dedicated to a career of naval service and have potential for future development in mind and character to assume the highest responsibilities of command, citizenship and government."

- b. For the purposes of this MOU, the United States Naval Academy also includes the Naval Academy Athletic Association (NAAA), a separate 501(c)(3) association that is subordinate to the Naval Academy through the Superintendent and the NAAA Board of Control.
- c. The Academy has acknowledged the Foundation as an organization that may identify and nurture relationships with potential donors and friends of the Academy; solicit gifts of cash, securities, real and intellectual property, and other private resources for the support of the Academy; and acknowledge and steward such gifts in accordance with the Foundation's fiduciary responsibility and the identified strategic priorities of the Academy.

### 3. RESPONSIBILITIES OF THE PARTIES

- a. The Academy will:
  - i. Routinely communicate to the Foundation Academy plans, objectives, and priorities as developed by the Academy's strategic planning process.
  - ii. Include the Foundation as an active and prominent participant in the Academy's strategic planning process.
  - iii. Ensure the Chief Executive Officer of the Foundation has regular and routine access to all members of the Superintendent's senior leadership team.
  - iv. Receive and utilize restricted gift funds from the Foundation subject to any terms, conditions, or limitation imposed by the donor, by law, or pursuant to court order or other legal determination and communicated by the Foundation, to the extent that such terms, conditions, or limitations:
    - 1. Are in the Academy's best interest, as determined by the Academy; or
    - 2. Do not violate applicable state or federal laws or subject the Academy to substantial risk of litigation that would exceed the benefits received by the funds, as determined by the Academy; or
    - 3. Do not violate the policies or procedures of the Academy.

- v. Receive and utilize unrestricted gift funds as may be provided by the Foundation to resource emergent, unbudgeted initiatives, projects, and/or programs that directly benefit the mission of Academy.
    - 1. It is understood that some unrestricted funds will be needed for official representation purposes. As such, those funds should be spent on events that enhance the reputation of the Naval Academy to external audiences, including opinion shapers and national or local/state leaders.
    - 2. Further they should also be spent on events that steward past donors or cultivate potential donors.
  - vi. Provide routine periodic reports to the Foundation on the use of all gift funds, restricted and unrestricted.
  - vii. Reserve the right to refuse any funds or gifts from the Foundation.
  - viii. Make good faith efforts in appropriate circumstances as determined by the Academy to work with the leadership of the Foundation board and the Foundation chief executive to identify and cultivate prospects for private gifts.
  - ix. Recognize that the Foundation is a private corporation with the authority to keep all records and data confidential, consistent with all relevant laws.
- b. The Foundation:
- i. Will support the mission and strategic goals of the Academy in a way that brings credit to both institutions.
  - ii. Bears the primary fundraising responsibility for the Academy.
  - iii. Is responsible for the performance and oversight of all aspects of its operations in accordance with its Bylaws and Charter.
- c. With respect to Fundraising, the Foundation will:
- i. Create an environment conducive to increasing levels of private support for the mission and priorities of the Academy.

- ii. Be responsible for planning and executing comprehensive fundraising programs in support of the Academy's mission. These programs include Annual Giving, Major Gifts, Planned Giving, Corporate and Foundation Relations, Class Giving, and Special Projects.
  - iii. Receive and accept gifts on behalf of the Academy, consistent with the Foundation's gift acceptance policy and any supplemental guidelines provided by the Superintendent.
  - iv. Establish, adhere to, and periodically assess its gift acceptance and management policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the Academy, and provide appropriate recognition and stewardship of such gifts.
  - v. Not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation Board of Directors, the Academy, and the granting governmental agency.
  - vi. Establish and enforce policies to protect donor confidentiality.
  - vii. Clearly represent and document the purposes and uses of funds expended on behalf of the Academy and the Brigade of Midshipmen, and take necessary and appropriate actions to avoid confusing the general public and donors.
- d. With respect to **Asset Management**, the Foundation will:
- i. Establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws.
  - ii. Receive, hold, manage, invest, and disburse contributions of cash, securities, real estate, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments.
  - iii. Engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and provide the Academy with a copy of audited financial statements, including management letters and Internal Revenue Service Forms 990.

- e. With respect to **Transfer of Funds**, the Foundation will:
- i. Serve as the primary and preferred depository of private gifts and transfer funds to the designated entity within the Academy in compliance with applicable laws, Academy policies, Board of Directors policies and gift agreements.
  - ii. Disburse moneys on behalf of the Academy only for reasonable business expenses that support the institution, are consistent with donor intent, and do not conflict with the law.
  - iii. Disclose any terms, conditions, or limitations imposed on a gift by the donor when distributing gifts funds to the Academy.
- f. With respect to **Funding and Administration**, the Foundation will:
- i. Establish a financial plan to underwrite the cost of Foundation programs, operations, and services.
  - ii. Have the right to retain investment income and use annual unrestricted funds and assess fees for services upon restricted gifts to support its operations.
  - iii. Clearly document the purposes and uses of funds transferred to the Academy and of gifts-in-kind provided to the Academy.
  - iv. Maintain, at its own expense, copies of the plans, budgets, donor records, and current account contracts that specify the management, investment and distribution of all funds contributed to the Foundation; and other documents, data or records developed in connection with the performance of its obligations and activities.
  - v. To the extent practicable and so long as such policies and practices are consistent with the other terms of this memorandum, Board policy, and other legal requirements, establish and enforce conflict of interest policies and adhere to best practices.
  - vi. The Foundation will provide access to data and records to the Academy's Office of the Deputy for Finance on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines. The Foundation will provide copies of its Annual Report and other information that may be publicly released.

#### 4. Mutual Responsibilities: Cultivation and Stewardship

##### a. Cultivation of Prospective Donors and Donor Stewardship

- i. The Superintendent of the Academy and the Chief Executive Officer of the Foundation, their staffs, and the Foundation Board of Directors will work collaboratively to:
  1. Identify and cultivate prospective private gift donors in support of the Academy and the Brigade of Midshipmen (solicitation of private gifts remains the sole responsibility of the Foundation).
  2. Appropriately steward private gift donors to the Academy via a variety of engagement opportunities, social events, and the provision of stewardship reports to major donors.

##### b. Annual Review of Fund Utilization:

- i. The Foundation's Joint Finance and Audit Committee will review annually the distribution of funds (restricted & unrestricted) to the Naval Academy.

#### 5. THIRD PARTY BENEFICIARIES

- a. Nothing herein shall make any person or entity a "third party beneficiary" to this agreement, and no third party is permitted to use this Agreement to create a cause of action against the Foundation.

#### 6. REVIEW, MODIFICATION, AND TERMINATION

- a. This Agreement shall be reviewed by the Academy and the Foundation every three years.
- b. This Agreement may be modified only with the written concurrence of both the Foundation and the Academy.
- c. Either party may terminate this Agreement (1) without cause upon written notice of not less than ninety (90) days to the other party, or (2) with cause immediately upon written notice to the other party. Notwithstanding the following, either party may terminate this MoU in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written show cause notice.

d. The Foundation must immediately notify the Academy if the Foundation ceases to exist or ceases to qualify as a tax-exempt organization under Internal Revenue Code section 501 (c)(3). Consistent with provisions of the Foundation's bylaws and articles of incorporation, if the Foundation dissolves, ceases to exist or ceases to qualify as a tax-exempt organization under Internal Revenue Code section 501 (c)(3), the Foundation will transfer its assets and property to one of the following in accordance with applicable law and donor intent (in order of priority):

i. A reincorporated successor foundation recognized by the Academy as its Foundation according to Board of Directors policies and procedures, or

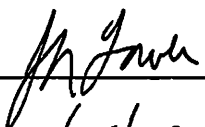
ii. The Academy

#### 7. ASSIGNMENT AND AMENDMENTS

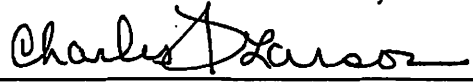
a. The Foundation shall neither assign nor transfer any rights or responsibilities under this Agreement without the prior written consent of the Academy. Any such assignment or transfer without the prior written consent of the Academy shall make this Agreement void at the option of the Academy. Any amendments to this Agreement shall be in writing.

IN WITNESS WHEREOF, the Parties have caused the AGREEMENT to be duly executed intended to be bound thereby.

For The United States Naval Academy:

BY: , Vice Admiral, USN, Superintendent  
DATE: 6/25/09

For The United States Naval Academy Foundation, Inc.:

BY: , Admiral, USN (Ret.), Chair  
DATE: 6/25/09

**First Amended  
Memorandum of Understanding (MoU)  
between**

**The United States Naval Academy  
and  
The United States Naval Academy Foundation, Inc.**

This agreement is entered into as of this 23<sup>rd</sup> day of January, 2012, by and between the U.S. Naval Academy (hereinafter referred to as "the Academy") and the U.S. Naval Academy Foundation, Inc. (hereinafter referred to as "the Foundation"), together referred to "the Parties."

To assist the Academy in meeting the requirements of DoD Directive 1000.26E, Support to Non-Federal Entities Authorized to Operate on DoD Installations, this Memorandum of Understanding between the Academy and the Foundation delineates the Foundation's mission and the support the Naval Academy may provide to the Foundation in fulfillment of its mission. The purpose of this MOU is to establish an understanding between the Academy and the Foundation for cooperation and the provision of such services and support.

The Naval Academy recognizes the importance and benefits of Foundation support for the Naval Academy and its programs. The support of the Foundation working collectively with alumni, supporters and parents of midshipmen serves to enhance and sustain the excellence of the Naval Academy.

In consideration of the mutual commitment of the Parties to the advancement of excellence in the accomplishment of the mission of the Academy, the parties agree as follows:

**1. THE RELATIONSHIP BETWEEN THE ACADEMY AND THE FOUNDATION**

- a. The Foundation was organized and incorporated on 31 December 1999. The mission of the Foundation is to support, promote, and advance the mission of the Academy by raising, managing, and disbursing private gift funds for the benefit of the Academy that provide a margin of excellence in support of the strategic institutional priorities identified by the Academy's leadership. It is the intent of the Foundation to provide private funding for Academy programs.
- b. The Foundation is a separately incorporated 501 (c) (3) organization which nurtures relationships with potential donors and friends of the Academy; ~~solicits gifts of cash, securities, real and intellectual property, and other~~  
~~private resources for the benefit of the Academy; and acknowledges and~~



stewards such gifts in accordance with its fiduciary responsibility and the respective donor(s)'s intent.

- c. The Academy is an Echelon Two command within the Department of the Navy whose mission is "To develop midshipmen morally, mentally and physically and to imbue them with the highest ideals of duty, honor and loyalty in order to graduate leaders who are dedicated to a career of naval service and have potential for future development in mind and character to assume the highest responsibilities of command, citizenship and government."

## 2. RESPONSIBILITIES OF THE PARTIES

### a. The Academy will:

- i. Apprise from time-to-time the Foundation of the Academy's plans, objectives, and priorities as developed by the Academy's strategic planning process.
  - ii. Communicate its strategic priorities to the Chief Executive Officer of the Foundation.
  - iii. Receive and utilize restricted gift funds from the Foundation subject to such terms, conditions, or limitation as are imposed by the donor, by law, or pursuant to court order or other legal determination and communicated by the Foundation, to the extent that such gifts:
    - 1. Are in the Academy's best interest, as determined by the Academy; and
    - 2. Do not violate applicable state or federal laws or subject the Academy to substantial risk of litigation that would exceed the benefits received by the funds, as determined by the Academy; and
    - 3. Do not violate the policies or procedures of the Academy and the Department of the Navy.
  - iv. Receive and utilize unrestricted gift funds as may be provided by the Foundation to resource emergent, unbudgeted initiatives, projects, and/or programs that directly benefit the mission of Academy.
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1. It is understood that some unrestricted funds will be needed for reception and entertainment purposes. As such, those funds should be spent on events that enhance the reputation of the Academy to alumni, supporters, and external audiences, including opinion shapers and national or local/state leaders.
  - v. Provide periodic reports to the Foundation on the use of all gift funds, restricted and unrestricted.
  - vi. Reserve the right to refuse any funds or gifts from the Foundation.
  - vii. Recognize that the Foundation is a private corporation, and a distinct legal entity separate and apart from the Academy, with the authority to keep all records and data confidential, consistent with all relevant laws.
  - viii. Appoint an Academy staff member as non-voting liaison to the Foundation in accordance with applicable ethics regulations to ensure communication between the Foundation and Naval Academy. The liaison will be entitled to request and receive such information concerning donor sources as will enable the Academy to perform prohibited source analysis consistent with Department of Navy guidance.
- b. The Foundation:
- i. Will support the mission and strategic goals of the Academy in a way that brings credit to both institutions.
  - ii. Is responsible for the performance and oversight of all aspects of its operations in accordance with its Bylaws and Charter.
- c. With respect to Fundraising, the Foundation will:
- i. Create an environment conducive to increasing levels of private support for the mission and priorities of the Academy.
  - ii. Plan and execute comprehensive fundraising programs in support of the Academy's mission. These programs include Annual Giving, Major Gifts, Planned Giving, Corporate and Foundation Relations, Class Giving, and Special Projects.
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- iii. Receive and accept gifts for the benefit of the Academy, consistent with the Foundation's gift acceptance policy and any supplemental guidelines provided by the Superintendent.
- iv. Establish, adhere to, and periodically assess its gift acceptance and management policies. It will promptly acknowledge and issue receipts for all gifts, and provide appropriate recognition and stewardship of such gifts.
- v. Not accept grants from state or federal agencies, except in special circumstances that are approved by its Board of Directors, the Academy, and the granting governmental agency.
- vi. Establish and enforce policies to protect donor confidentiality.
- vii. Clearly represent and document the purposes and uses of funds expended for the benefit of the Academy and the Brigade of Midshipmen.
- viii. Provide such information concerning donor source as may be requested by the Academy to enable the Academy to perform prohibited source analysis consistent with Department of the Navy guidance.

d. With respect to **Asset Management**, the Foundation will:

- i. Establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws.
- ii. Receive, hold, manage, invest, and disburse contributions of cash, securities, real estate, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments.
- iii. Engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and provide the Academy with a copy of audited financial statements, including management letters and Internal Revenue Service Forms 990.

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e. With respect to **Transfer of Funds**, the Foundation will:

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- i. Offer such annual support to the Academy as it is prudently able to provide based on the Foundation's identified available funding.
  - ii. Request the Academy's anticipated programmatic support requirements.
  - iii. Upon formal acceptance by the Department of the Navy transfer gift funds to the designated entity within the Academy in compliance with applicable laws, Academy policies, Board of Director's policies, and the terms of any pertinent gift agreements
  - iv. Disclose all terms, conditions, or limitations imposed on a gift by the donor when distributing gifts funds to the Academy.
- f. With respect to Funding and Administration, the Foundation will:
  - i. Establish a financial plan to underwrite the cost of Foundation programs, operations, and services.
  - ii. Retain investment income.
  - iii. Clearly document the purposes and uses of funds transferred to the Academy and of gifts-in-kind provided to the Academy.
  - iv. Maintain, at its own expense, copies of the plans, budgets, donor records, and current account contracts that specify the management, investment and distribution of all funds contributed to the Foundation; and other documents, data or records developed in connection with the performance of its obligations and activities.
  - v. To the extent practicable, and so long as such policies and practices are consistent with the other terms of this memorandum, Board policy, and other legal requirements, establish and enforce conflict of interest policies and adhere to best practices.

### **3. THIRD PARTY BENEFICIARIES**

- a. Nothing herein shall make any person or entity a "third party beneficiary" to this agreement, and no third party is permitted to use this Agreement to create a cause of action against the Foundation.
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- b. The Foundation may participate with other entities including the Naval Academy Athletic Association and the Naval Academy Alumni Association to provide initiatives and programs for the benefit of the Academy.

#### 4. REVIEW, MODIFICATION, AND TERMINATION

- a. This Agreement shall be reviewed by the Academy and the Foundation every three years and modified as deemed necessary.
- b. This Agreement may be modified only with the written concurrence of both the Foundation and the Academy.
- c. Either party may terminate this Agreement (1) without cause upon written notice of not less than ninety (90) days to the other party, or (2) with cause immediately upon written notice to the other party.  
Notwithstanding the foregoing, either party may terminate this MoU in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written show cause notice.
- d. The Foundation shall immediately notify the Academy if the Foundation ceases to exist or ceases to qualify as a tax-exempt organization under Internal Revenue Code section 501 (c)(3). Consistent with provisions of the Foundation's bylaws and articles of incorporation, if the Foundation dissolves, ceases to exist or ceases to qualify as a tax-exempt organization under Internal Revenue Code section 501 (c)(3), the Foundation will transfer its assets and property to one of the following in accordance with applicable law and donor intent (in order of priority):
  - i. A reincorporated successor foundation recognized by the Academy as its Foundation according to Board of Directors policies and procedures, or
  - ii. the Academy.


#### 5. ASSIGNMENT AND AMENDMENTS

- a. The Foundation shall neither assign nor transfer any rights or responsibilities under this Agreement without the prior written consent of the Academy. Any such assignment or transfer without the prior written consent of the Academy shall make this Agreement void at the option of the Academy. Any amendments to this Agreement shall be in writing.

- b. This agreement amends and supersedes an earlier MoU between the parties dated June 25, 2009.

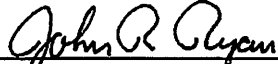
IN WITNESS WHEREOF, the Parties have caused the FIRST AMENDED MEMORANDUM OF UNDERSTANDING to be duly executed intended to be bound thereby.

United States Naval Academy:

BY: , Vice Admiral, USN, Superintendent

DATE: 1-23-12

United States Naval Academy Foundation, Inc.:

BY: , Vice Admiral, USN (Ret.), Chair

DATE: 10/31/2011